



Food, Food Ingredients, and Prepared Food 2014

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More...

Today's Agenda (continued)

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1. Overview of Sales and Use Tax

Sales tax is...

- ... a transactional tax,
- ... based on the transaction,
- ... rather than the item sold.

Where the item or service is delivered determines the local sales tax rate and to whom the tax is due.

A sale is...

- ... the transfer of title or possession,
- ... of an item or taxable service,
- ... for consideration.

A lease or rental of tangible personal property...

...can be a sale,

...if there is transfer of possession.

Sales tax is due on each
lease or rental payment.

All sellers...

...are the consumers of anything they use to sell their items and services; and

...must pay tax on them.

Example 1. Cash registers

Example 2. Security services

Taxable Services

- Animal specialty services
- Building cleaning
- Computer software training
- Detective services
- Installing/applying tangible personal property
- Motor vehicle towing, washing/waxing, painting
- Pest control services
- Recreational vehicle (RV) park services
- Security services
- Repair labor (with 5 exceptions)

For a more complete list of taxable and nontaxable services, see the [Nebraska and Local Sales Tax Information Guide](#) on our website.

All service providers...

...are the consumers of the taxable items and services used to provide the service; and
...must pay tax on those items or services
(even if the charge for the service is also taxable).

Example 1. The carwash does not sell soap and wax, but a “car wash.”

Example 2. A window cleaner is not selling window cleaning solution, but “clean windows.”

What is Use Tax?

- Use tax is due when Nebraska sales tax has not been paid on a taxable item or service purchased for use in Nebraska.
- Sales and use tax are not both due on the same transaction.
- The big difference is who remits the tax -
 - Sales tax is collected and remitted by the seller.
 - Use tax is paid directly to the Department by the purchaser/consumer.

Use Tax and Sales Tax Have These Things in Common –

- They are imposed on the same transactions.
- They have the same exemptions.
- They are calculated at the same rate.
 - Where delivery occurs; or
 - Where first usage in Nebraska takes place.

When Use Tax is Due

- Use tax is often due when purchases are made from an out-of-state seller
 - Internet, catalog, mail order
 - Magazines and journals by subscription
- Use tax is due when the business withdraws tax-free inventory for business or personal use (including donations)
 - Auto mechanic
 - Hair salon

Note: Be sure to maintain good records!

2.

**2A. Food &
Food Ingredients**

2B. Prepared Foods

2. Food, Food Ingredients, and Prepared Foods

The sales tax laws address two types of food items:

- Food & Food Ingredients
(BLUE = Nontaxable); and
- Prepared Foods
(MAROON = Taxable).

2A. Food & Food Ingredients

- **Food and food ingredients (nontaxable)** are:
 - Substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated **(any) form**;
 - **Ingested or chewed** by humans; and
 - Consumed for their **taste or nutritional value**.

Examples include, but are not limited to:

- | | | | |
|-----------------|---------|---------------|--------------|
| ▪ Bottled water | ▪ Eggs | ▪ Meats | ▪ Sugar |
| ▪ Candy | ▪ Flour | ▪ Milk | ▪ Vegetables |
| ▪ Cereals | ▪ Fruit | ▪ Soft drinks | |
| ▪ Chewing gum | ▪ Ice | | |

*For more information,
see [Reg-1-087.01A](#) – Food and Food Ingredients.*

- **Meal Substitutes** are considered food and are **nontaxable**.
 - Look for the **Nutrition Facts** box on the label.

Nutrition Facts		
Serving Size 1 piece (219g)		
Servings Per Container 6		
Amount Per Serving		
Calories 520		Calories from Fat 240
% Daily Value*		
Total Fat 27g		41%
Saturated Fat 12g		61%
Cholesterol 255mg		86%
Sodium 1110mg		46%
Total Carbohydrate 29g		10%
Dietary Fiber 1g		5%
Sugars 1g		
Protein 39g		
Vitamin A 20%	•	Vitamin C 4%
Calcium 15%	•	Iron 25%
*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.		
	Calories:	2,000 2,500
Total Fat	Less than 65g	80g
Saturated Fat	Less than 20g	25g
Cholesterol	Less than 300mg	300mg
Sodium	Less than 2,400mg	2,400mg
Total Carbohydrate	300g	375g
Dietary Fiber	25g	30g
Calories per gram:		
Fat 9 • Carbohydrate 4 • Protein 4		

- **Alcoholic beverages, dietary supplements, and tobacco are taxable.**

- A dietary supplement is any product required to be labeled as a **dietary supplement**.

- Look for a **supplemental facts box** on the label.

- **Certain Energy Drinks**
- **Dietary Substances**
- **Herbs**
- **Minerals**
- **Vitamins**

Supplement Facts		
Serving Size: Two Tablets		
	Amount per Serving	% Daily Value
Vitamin A (as Beta Carotene)	25,000 IU	500
Vitamin C (as Ascorbic Acid)	1,000 mg	1670
Vitamin E (as Tocopheryl Succinate)	400 IU	1330
Zinc (as Zinc Gluconate)	50 mg	333
Copper (as Copper Gluconate)	2 mg	100
Selenium (as Selenomethionine)	50 mcg	71
Chromium (as Chromium Picolinate)	200 mcg	166
Citrus Bioflavonoid Complex	250 mg	*
Eyebright (Euphrasia officinalis)	50 mg	*
Alpha-Lipoic Acid	50 mg	*
Ginkgo Biloba	25 mg	*
L-Glutathione	10 mg	*
FloraGLO® Lutein (containing Zeaxanthin)	6 mg	*
*Daily Value not established		

For more information,
see [Reg-1-087.01B](#) – Food and Food Ingredients.

2B. Prepared Food

- If a food meets **any** of the following criteria, it is **prepared food** and is **taxable**:
 - **Two or more food ingredients** mixed or combined (for example, meals, sandwiches, fountain drinks);
 - Food sold in **heated** state (for example, soups, hamburgers, coffee); or
 - Food **sold with eating utensils (75% rule applies)** (for example, plates, bowls, napkins, forks, straws).

More on the 75% rule later....

*For more information,
see [Reg-1-087.03B](#) – Prepared Foods.*

- **Prepared foods, coin-operated vending machine sales, concessionaire sales, and sales by caterers (all taxable)** involve food that is:
 - Intended for **immediate consumption**; and
 - **Ready to be eaten** without further preparation.

Examples include, but are not limited to:

- | | |
|--------------------------------------|-------------------------|
| ▪ Coffee/fountain drinks | ▪ Meals |
| ▪ Fried or rotisserie chicken | ▪ Sandwiches |
| ▪ Ice cream cones | ▪ Slice of pizza |

*For more information,
see [Reg-1-087.03B](#) – Prepared Foods.*

- **Prepared food does not include:**

1. Bakery items sold in an **unheated state** or **without eating utensils (nontaxable)**.

Examples include, but are not limited to:

- Bagels ▪ Cookies ▪ Cakes
- Bread ▪ Donuts ▪ Tortillas

2. Food sold by **weight** or **volume (nontaxable)**.

Examples include, but are not limited to containers **priced per pound (not per serving)** of:

- Chicken (**unheated**) ▪ Fruit Salad ▪ Popcorn
- Coleslaw ▪ Ice Cream ▪ Potato Salad

More...

- **Prepared food does not include:**

3. Food that is only **cut, repackaged, or pasteurized** by the seller **(nontaxable)**.

Examples include, but are not limited to:

- **Cheeses**
- **Fruit Trays**
- **Cheese Trays**
- **Luncheon Meats**

4. **Eggs, fish, meat, poultry**, and foods containing these raw animal foods, that **require cooking** by the consumer **(nontaxable)**.

3.

The 75% Rule

3. The 75% Rule

On Slide 21,
we listed criteria that make food **taxable**.
Now let's talk about “**eating utensils**.”

- If total sales of **prepared foods** are **more than 75%** of total food sales...
- ...then, **eating utensils** need only be **made available** to the purchaser to make the food **taxable**.

OR

- If total sales of **prepared foods** are **75% or less** of total food sales...
- ...then, **eating utensils** need to be **given** to the purchaser to make the food **taxable**.

*For more information,
see [Reg-1-087.02-03](#) – Prepared Foods.*

Here's how to calculate it.

Numerator

=

Total sales of **prepared food**
(**Two or more food ingredients** mixed or
food sold in **heated state**)

Denominator =

Total sales of **food, food ingredients, candy, soft drinks, prepared food, and dietary supplements**

NOTES:

- Do not include sales of alcoholic beverages, tobacco, motor vehicle fuels, and any other non-food sales;
- Calculate the % based on retailer's most recently completed tax year; **and**
- Calculate the % based on totals for ALL locations in Nebraska.

Establishing an Annual Percentage

Example 1.

- ABC Pizza's annual sales were \$200,000.
- Sales of **prepared food items** were **\$168,000**.

Here's the calculation:

$$\frac{\$ 168,000}{\$ 200,000} = 84\% \text{ of sales are } \mathbf{prepared\ food}.$$

84% > 75%, so **eating utensils** only need to be **available** to make a transaction **taxable**.

If a convenience store has **75% or less** of sales of **prepared food**, it **must give an eating utensil** to the customer to make a food item **taxable**.

Example 2. XYZ, a convenience store, sells:

- a slice of prepared pizza on a plate; and
- a bottle of water.

Prepared pizza on a plate	\$ 5.50	(T)
Bottle of water	<u>+1.50</u>	(NT) Nontaxable
Subtotal	7.00	
Tax (7% x \$5.50)	<u>+ .39</u>	
Total	\$ 7.39	

If **more than 75%** of sales by the restaurant are **prepared food**, and **eating utensils are available** to the customer, then all food items are **taxable**.

Example 3. ABC Pizza sells:

- a prepared meal; and
- a bottle of water.

Prepared meal	\$ 18.50	(T) Taxable
Bottle of water	<u>+1.50</u>	(T)
Subtotal (all taxable)	20.00	
Tax (7% x \$20)	<u>+ 1.40</u>	
Total	\$ 21.40	

There is an exception to the 75% Rule.

IF... a food item has:

- **4 or more servings packaged as one item** (for example, an ice cream cake); and
- **serving sizes based on the Nutrition Facts label,**

...THEN,

- the food item is considered a **grocery item**, and is **nontaxable**.

Exception to the 75% Rule

Example 5. Bob's Restaurant (whose sales of **prepared food** are **more than 75%**) sells:

- a prepared meal,
- a bottle of water, and
- an ice cream cake (to go).

Prepared meal	\$ 18.50	(T)
Bottled water	+ 1.50	(T)
Ice cream cake (to go)	+ 9.00	(NT)
Subtotal	29.00	
Tax (7% x \$20)	<u>+ 1.40</u>	
Total	\$ 30.40	

4. Additional Information on Prepared Meals

4. Additional Info on Prepared Meals

- These **prepared meals** are generally **taxable** to the purchaser:
 - **Awards banquets**
 - **Charity benefits**
 - **Employee meals**
 - **Suggested donations**
- **Prepared meals** are generally **nontaxable** when provided to:
 - **School & university students**
 - **Students living in dorms**
 - **Residents of retirement and assisted living facilities**
 - **Senior centers (accepting SNAP coupons)**

*For more information,
see [Reg-1-087](#) – Food For Human Consumption.*

- **Prepared meals** served by a **religious organization** are **nontaxable**, when:
 - The meal is sold at a function that only members of the organization can attend; and
 - The religious organization is allowed only one tax exempt event that is open to the general public annually.

*For more information,
See [Reg-1-083](#) – Food Service, and
[Reg-1-087.05A](#) – Prepared Foods.*

5.

Catering

- All charges for **catering prepared foods** are **taxable**.

Items may be included on the bill, but are not limited to:

- **Bakery items**
- **Food (hot or cold)**
- **Bar (beverages)**
- **Service charges (mandatory tips)**
- **Chairs and tables**
- **Wages**

6. Vending Machines

- Vending machine sales are **taxable**.
 - All **items sold** from the machine, including **food and beverages**, are **taxable**.
 - Sales tax is included in the price.
 - Owner needs only one sales tax permit for all machines, even though they may be at different locations.

*For more information,
see [Reg-1-031](#) – Coin-Operated Machines.*

7. Farmer's Markets, Craft Shows

- The sale of these items are **taxable**.
Examples include, but are not limited to:
 - **Concessions**
 - **Crafts & clothing**
- The sale of **food & food ingredients** are **nontaxable**.
Examples include, but are not limited to:
 - **Fruits**
 - **Vegetables**
 - **Whole pies**
 - **Jelly & jams**
 - **Loaves of bread**
 - **Spices**

For more information, see [Reg-1-041](#) – Concessionaire Sales.

Collecting Sales Tax at Craft Fairs and Other Events

- All sellers of tangible personal property must have a Nebraska sales tax permit.
- Sellers who only sell tax exempt items are not required to have a permit.
 - Fruits, vegetables, bakery items
- Sellers must separately state the sales tax on the customer's receipt.
- Sales tax cannot be included in the price.

8.

Discounts

Discount Coupons and Certificates

- Deal of the Day
 - **Apply sales tax** when the item/service is redeemed.
- Gift Certificate
 - **Apply sales tax** when the item/service is redeemed.
- Group Discount
 - It depends on manufacturer or retailer.
- Manufacturer Discount
 - **Calculate the sales tax first**, then discount the amount.
- Retailer Discount
 - Discount the amount first, then **calculate the sales tax**.

*For more information, see [Reg-1-037](#) –
Trading Stamps and Coupon Redemption.*

9.

Gift Baskets

- If the fair market value (FMV) of **food or food ingredients** in the basket is greater than the FMV of the taxable items, the gift basket is **nontaxable**.
- If the FMV of the **taxable items** is greater, the FMV of the gift basket is **taxable**.

Basket (itself)	\$ 4.00	(T)
Cheese	+ 2.35	(NT)
Crackers	+ 2.50	(NT)
Wine	<u>+14.50</u>	(T)
Subtotal	23.35	
Tax (7% x \$23.35)	<u>+ 1.63</u>	
Total	\$ 24.98	

Since the total of the **taxable items** (\$18.50) is higher than the items that are **nontaxable** (\$4.85), the whole basket is subject to sales tax when it is sold to the customer.

10. Purchases

- Items that will be resold are **nontaxable**.
 - Issue a **Nebraska Form 13, Section A**, Nebraska Resale Certificate.

Examples include, but are not limited to:

- **Alcoholic beverages**
- **Single-use disposable items include:**
 - Disposable cups (foam, cardboard)
 - Nonreturnable containers (sacks, boxes)
 - Paper plates and napkins
 - Plastic eating utensils

- Containers are either returnable or nonreturnable.
 - **Returnable containers** are **taxable** when sold to the person who will place the contents into them.
 - **Nonreturnable containers** are **nontaxable** when sold to the person who will fill the container and sell the contents with the container.

For more information, see [Reg-1-043](#) – Containers.

11.

Gross Receipts –

11A. Delivery Charges

11B. Occupation Tax

11C. Tips & Gratuities

11A. Delivery Charges

- Delivery charges are **taxable** when:
 - the buyer pays the seller...
 - for the delivery charge...
 - and the transaction is taxable.
- Delivery charges (no matter what they are called) are **taxable** regardless of the method of delivery.

If you owe use tax on a purchase,
you also owe use tax on any
delivery charge paid to the seller
as part of that purchase.

11B. Occupation Tax

Any city may collect an occupation, privilege, or license tax, on a business within its boundaries.

- The occupation tax rate is set by the city.
- The occupation tax is imposed on the business, similar to income taxes and property taxes.
- The business pays the occupation tax directly to the city on forms provided by the city.
 - Many cities allow sellers to itemize the occupation tax on their customer's bill or invoice as a separate line item.

- The occupation tax is part of the seller's gross receipts.
- If it is separately stated on the invoice, the occupation tax must be added to the sales price before calculating state and local sales tax (see the following example).

Example – Meal-only Restaurant Bill

Meal	(in Omaha, NE)	\$50.00	
Occupation Tax	(2.5%)	<u>+ 1.25</u>	>> Remit to the city
Subtotal	(gross receipts)	\$51.25	
Sales Tax 7%	(state 5.5% and city 1.5%)	<u>+ 3.59</u>	>> Remit to the NE Dept. of Revenue
Total		\$54.84	

11C. Tips & Gratuities

- **Mandatory (taxable)**
- **Discretionary (nontaxable)**

12.

Other Information

12A. Governmental Entities

12B. Records

12C. Certificate of Clearance

- Sales of prepared food are generally **nontaxable** when billed directly to and paid for by the:
 - **US Government**
 - **Nebraska counties**
 - **State of Nebraska**
 - **Nebraska cities & villages**
- **Taxable** sales to governmental entities include:
 - sales of **prepared food paid for by an employee**, even if the employee will be reimbursed.

For more information, see [Reg-1-093](#) - Governmental Units.

12B. Records

- Every seller is required to keep records.
 - Documents
 - List of items or services consumed in the business
 - Normal books of account
 - Receipts showing taxes paid
 - Resale and exempt sale certificates
 - Schedules
 - Working papers used in preparing tax returns

We recommend you retain records for 5 years after a return is filed.

For more information, see [Reg-1-008](#) – Records.

Purchasing a Business = Buying a Liability?

The buyer can be held liable for taxes due by the previous owner up to the amount of the purchase price, even if a lien has not been recorded.

Protect yourself!

- **Certificate of Clearance:**
 - Buyer or seller requests and receives the certificate in writing.
 - If buyer makes request, seller must sign the form.
 - Request the certificate by filing a Form 36, Tax Clearance Application.
 - Form 36 should be filed at least 15 days prior to closing.
- **The Department will:**
 - Advise whether or not buyer should withhold funds from the purchase amount, including any assumed debt, to cover outstanding tax liability.

For more information see Successor in Interest, [§ 77-2707 Sales and Use Tax](#), and Transferee, [§ 77-27,110 Income Tax Withholding](#).



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Thank you!

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